IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5381 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

NARSINHBHAI DHARMSHIBHAI MAKWANA

Appearance:

MRS SN PAHWA for Petitioner
MR ND SONGRA for MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 18/06/2001

ORAL JUDGEMENT

1. Heard the learned counsel Mrs.S.N.Pahwa for the petitioner and Mr.N.D.Songra for Mr G.K.Rathod for the respondent.

2. This application styled as a petition under Article 226 of the Constitution is, in fact, challenging the order of the Industrial Tribunal, Bhavnagar in Complaint (IT) No.60 of 1993 whereby the order dated 19.6.1993 terminating the service of the respondent is held to be illegal and the petitioner is directed to reinstate the respondent with continuity of service and 25% backwages.

3. The respondent appears to have approached the Industrial Tribunal with the dispute and the grievance that even after 21 years of service as an off-day reliever watchman, he was not being made permanent. During the pendency of such dispute and the reference, the petitioner terminated the service of the respondent on 19.6.1993 pursuant to which the complaint by the respondent was filed. After taking and appreciating the evidence, it was found and held by the Tribunal that the respondent was serving as a reliever watchman since 1.9.1971 and had worked for 240 days in each year. The termination of service of the respondent was found to be an illegal change in the condition of his service in violation of Section 33 of the Industrial Disputes Act. It was also found and held that no retrenchment compensation was paid and it was not proved by the petitioner that the respondent was the junior-most employee employed in the same category. However, taking note of the fact that the respondent was employed as and when the permanent watchman remained on leave, or on weekly holidays, the award of backwages was restricted to 25%.

4. The learned counsel for the petitioner vehemently argued that in the case of an off-day reliever, there cannot be any question of continuity of service and that the award of 25% backwages was also not justified, particularly in view of the fact that the respondent had never put in 240 days of service throughout the period of his service from 1971 to 1993. The learned counsel relied upon a statement showing the days of attendance of the respondent from 1971 to 1993 as per the record of the petitioner. The said statement was not a part of the original record and it was not submitted with an affidavit in this Court. However, even according to that statement, the respondent appeared to have worked under the petitioner for 101 days in 1985, 55 days in 1986, 81

days in 1987, 111 days in 1988, 91 days in 1989, 67 days in 1990, 143 days in 1991, 93 days in 1992 and for 39 days in the year in which he was discharged. Thus, the respondent could, on an average, have employment for at least 25% of the working days in a year, and he could have earned remuneration on the same line had his service not been illegally terminated. In view of these facts, when the respondent was ordered to be reinstated and as he is admittedly reinstated by now, the award of 25% backwages appears to be fully justified. And the order of reinstatement and continuity of service in no way changes the character of service and the status of the respondent which remains that of an off-day reliever.

5. In short, this Court finds no reason to interfere with the impugned award in exercise of the extraordinary powers invoked by the petitioner. The petition is accordingly dismissed. Rule is discharged with no order as to costs.

Sd/-

18.6.2001 (D.H.Waghela, J.)

(KMG Thilake)